**Calendar No. 266**

106TH CONGRESS, *1st Session* | SENATE | REPORT 106–145

PROVIDING TECHNICAL CORRECTIONS TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996, TO IMPROVE THE DELIVERY OF HOUSING ASSISTANCE TO INDIAN TRIBES IN A MANNER THAT RECOGNIZES THE RIGHT OF TRIBAL SELF-GOVERNANCE, AND FOR OTHER PURPOSES

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AUGUST 27, 1999.—Ordered to be printed

Filed under authority of the order of the Senate of August 5, 1999

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Mr. CAMPBELL, from the Committee on Indian Affairs, submitted the following

# REPORT

[To accompany S. 400]

The Committee on Indian Affairs, to which was referred the bill (S. 400) to provide technical corrections to the Native American Housing Assistance and Self-Determination Act of 1996, to improve the delivery of housing assistance to Indian tribes, in a manner that recognizes the right of tribal self-governance, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

## PURPOSES

The purpose of S. 400 is to provide technical corrections to the Native American Housing Assistance and Self-Determination Act of 1996, to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.

## BACKGROUND

The United States Housing Act of 1937 created the Public Housing Program in order to provide decent and safe housing for low-income families. For many years, this act was interpreted to ex-

clude Native Americans living in or near tribal areas. It was not until the 1960's that Indian housing programs were undertaken by the Public Housing Administration, the predecessor of the Department of Housing and Urban Development (hereinafter "HUD"). Eventually, HUD assumed responsibility for Indian housing programs and in 1988 the Indian Housing Act established a separate Indian housing program with regulations specific to this program.

Native American housing is characterized by poor and substandard conditions. In fact, Native American housing is the worst in the nation and has been justifiably compared to that of third world nations. The following statistics demonstrate the dire need for both additional and improved Indian housing. As determined by the 1990 census, one out of every five Indian homes lacks complete plumbing facilities. In addition, forty percent (40%) of Native Americans on trust land live in overcrowded or physically inadequate housing, compared to six percent (6%) of the overall United States population.[1] Finally, the demand for Indian housing is increasing as the Native American population continues to grow.

In 1996, the Native American Housing Assistance and Self-Determination Act of 1996 (hereinafter "NAHASDA" or the "Act"),[2] was enacted and became effective on October 1, 1997. NAHASDA reflects the unique government-to-government relationship between Indian tribes and the Federal government. Before passage of the Act, the planning, financing, and building of Indian housing was largely determined at the Federal level. NAHASDA now establishes a single, flexible block grant for tribes or their tribally designated housing entities to administer housing assistance to tribal members. Monitoring and oversight of the block grant is provided by HUD. By decreasing tribal reliance on federal bureaucracy, NAHASDA is consistent with and furthers the principles of tribal self-determination and self-sufficiency.

With the implementation of NAHASDA, the need for improvement and clarification of certain provisions of the Act has arisen. S. 400 provides clarification and changes to the Act to assist tribes and HUD in achieving a smoother transition from the old HUD-dominated regime to the new framework of NAHASDA. The amendments in S. 400 are derived from hearings held by the Committee on Indian Affairs in both the 105th and 106th Congress. The hearing held during the 105th Congress was a joint hearing before the Committees on Indian Affairs and Banking, Housing and Urban Affairs, and focused on the management of Indian housing under the old HUD-dominated regime. The hearing in the 106th Congress focused on both HUD and the tribes' experience with the implementation of NAHASDA.

## SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title; Table of Contents. The title of this bill is the Native American Housing Assistance and Self-Determination Act Amendments of 1999.

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[1] *Assessment of American Indian Housing Needs and Programs*, Urban Institute, May 1996.

[2] Native American Housing Assistance and Self-Determination Act of 1996. Pub. L. 104–330, 25 U.S.C. § 4104–4195 (Supp. 1996).

Sec. 2. Restriction on Waiver Authority. Currently, secretarial waivers for Indian housing plans have no time limit. The Committee on Indian Affairs believes that unlimited waiver authority is inappropriate and could be subject to abuse. Thus, the proposed modification to section 101(b)(2) places a 90 day limit on the amount of time that the Secretary may waive the Indian housing plan requirement. Also, the proposed modification would permit such waivers only if the Secretary determines that an Indian tribe has not or cannot comply with the plan requirements because of "exigent circumstances beyond the control" of the tribe.

In addition, section 2 would permit the Secretary to waive the local cooperation agreement and exemption from taxation requirements if a recipient tribe has made a good faith effort to comply with the requirements, yet is unable to do so. Under NAHASDA, the Secretary may not make a grant for the use of rental or lease-purchase homeownership units on behalf of a tribe[3] unless the tribe and the governing body of the locality (within which any housing will be assisted) have entered into a local cooperation agreement. Generally, the governing body of the locality is either a city or county government. Thus, a tribe may be prevented from using grant monies for development if a county or city refuses to sign a local cooperation agreement. This modification would allow a tribe or tribally designated housing entity to receive and implement NAHASDA grant funds when there is no local cooperation agreement, but only if the tribe negotiated to secure an agreement in good faith.[4] The determination of good faith bargaining is subject to judicial review pursuant to the Administrative Procedures Act.[5]

The "Exemption From Taxation" requirement of section 101(d) also requires an agreement between the tribe and the local governing body (within which any housing will be assisted). S. 400 would allow the tribe to use the NAHASDA grant for development if the tribe has attempted in good faith, but has been unable to achieve an agreement with the local governing body. Although the local agreement requirement may be waived, the tribe must still make payments in lieu of taxes as required under section 101(d)(2).

Sec. 3. Assistance to Families That Are Not Low-Income. This section adds a new paragraph to section 102(c) requiring that tribal housing plans include evidence that there is a need for housing that cannot be reasonably met without HAHASDA assistance when housing is provided for non-low-income families under section 201(b)(2). This new requirement for Indian housing plans is consistent with the existing section 201(b)(2), which also requires that before housing can be provided for non-low-income families, the Secretary must prove that there is a need for housing that cannot reasonably be met without such assistance.

Sec. 4. Elimination of Waiver Authority for Small Tribes. This amendment eliminates section 102(f), which authorizes the Secretary to establish separate housing plan requirements for small

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[3] 25 U.S.C. § 4111(c)–(d), as amended by H.R. 4194, 105th Cong. § 595 (1999) Department of Veterans Affairs and Housing and Urban development, and Independent Agencies Appropriations Act, 1999.

[4] For a discussion of "good faith" negotiations, see *N.L.R.B.* v. *Generac Corp.,* 354 F.2d 625, 638 (7th Cir. 1965).

[5] 5 U.S.C.A. § 702 (1996).

tribes. In practice, HUD through the NAHASDA regulations has eliminated separate housing plan requirements for small tribes.[6]

Sec. 5. Labor Standards. This section modifies section 104(b)(1). Currently, the wage rate of all Indian housing assisted under the Act must meet the requirements of the Davis-Bacon Act.[7] Under the Davis-Bacon Act, wage rates for laborers are determined by the Secretary of Labor in accordance with the corresponding wage rate paid to classes of laborers employed on projects of a similar character in the locality. Thus, tribes or their tribally designated housing entities must pay wages that are no less than those prevailing in the local area. The construction of tribal housing is often disadvantaged by the application of the Davis-Bacon provisions because HUD's wage surveys are generally based on considerably higher wages earned in larger metropolitan areas with a large population of unionized contractors.[8]

S. 400 grants tribes and tribally designated housing entities a limited, threshold exemption to the application of the Davis-Bacon provisions but only if fewer than 12 units of housing are to be built. Other HUD programs include a similar exception when fewer than 12 housing units are developed. The following HUD programs, among other programs, contain the "under 12 units" exception: (1) Section 202 Supportive Housing for the Elderly Program, (2) Section 811 Supportive Housing for Persons with Disabilities Program, and (3) housing under the Home Investment Partnership Program. In addition, the Housing Opportunities for Persons with AIDS Program has a complete exemption from Davis-Bacon requirements.

Application of Davis-Bacon increases the cost of construction and ultimately reduces the number of Indian homes that are built. On March 12, 1997, at a joint hearing before the Senate Committees on Indian Affairs and Banking, Housing and Urban Affairs, both Indian housing authorities and HUD officials stated that compliance with Davis-Bacon requirements burdened Indian housing authorities by increasing the costs of construction.[9] It is estimated that Davis-Bacon requires wage rates that are $10.00 per hour higher than those of reservation wage rates.[10] This inflated wage rate increases the cost of labor on the reservation. The ultimate result is that fewer homes are built in Indian communities. In a community that is in dire need of increased and improved housing, compliance with Davis-Bacon requirements impedes the maximum capabilities of NAHASDA.

Sec. 6. Environmental Compliance. This amendment allows the Secretary to waive the requirements of the environmental review process in certain limited situations, but only if the waiver: (1) will not frustrate the National Environmental Policy Act (hereinafter "NEPA"), (2) will not threaten the health or safety of the local community by posing an immediate or long-term hazard, (3) is a result of an inadvertent error, and (4) must be corrected through the sole action of the recipient. The intent of this language is aimed at pro-

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[6] See 24 C.F.R. § 1000.222 (1996).
[7] Davis-Bacon Act, 40 U.S.C.A. § 276a (1996).
[8] Oversight Hearing to Review the Operation of the Indian Housing Programs at the Department of Housing and Urban Development, 105th Cong. 11–12 (1997) (Statement of Judy A. England-Joseph, Director, GAO).
[9] *Id.*
[10] *Id.*

cedural or technical non-compliance and not substantive non-compliance with environmental standards under NEPA.

This language gives the Secretary discretion to determine on case-by-case basis whether a waiver would meet all four requirements. Thus, if the Secretary believes that one of these requirements is not met, he may determine that a waiver is unjustified. Moreover, the determination of procedural non-compliance is subject to judicial review pursuant to the Administrative Procedures Act.[11]

Sec. 7. Oversight. This section renames section 209—"Repayment" as "Noncompliance with Affordable Housing Activities," and clarifies that the Secretary's remedies for noncompliance under section 209 (concerning 205(a)(2)—low income and income targeting requirements) are governed by the amended section 401(a). Under 401(a), the Secretary may still reduce payments to tribes consistent with due process provisions in the Act.

This section also amends section 405—"Remedies for Noncompliance" by:

(a) making applicable the requirements of the Single Audit Act to tribal housing entities. Under the Single Audit, a tribal housing entity will be treated as a non-Federal entity;

(b) permitting the Secretary to conduct audits to determine whether the grant recipient has carried out eligible activities in a timely manner; met certification requirements; an ongoing capacity to carry out eligible activities in a timely manner; and complied with the proposed housing plan. The Secretary may also conduct audits to verify the accuracy of information contained in any report submitted under section 404. To the extent practicable, the reviews and audits conducted under this subsection are to include onsite visits;

(c) providing notice to recipients that are subject to Secretarial reports. This notice will inform recipients who have been subject to a report that they may review and comment on the report within 30 days from the date of notice. After the Secretary takes into consideration any comments from the recipient, the Secretary may revise the report. Within 30 days of the Secretary receiving the tribe's comments, the Secretary will make the comments and the report (and any revisions that the Secretary made under section 405(c)(2)(A)) readily available to the public; and

(d) permitting the Secretary, after reviewing reports and audits, to adjust grant amounts made to recipients in accordance with the findings of the Secretary's reports and audits.

Sec. 8. Allocation Formula. The proposed amendment sets a different standard for Indian housing authorities operating fewer than 250 units by requiring the amount of assistance provided to these tribes to be based on an average of their allocations from the proper five (5) fiscal years (fiscal years 1992 through 1997). Currently, tribes with under 250 units must apply for operation and modernization monies annually. Modernization monies are based on the amount of assistance given to a tribe in fiscal year 1996 for operation and modernization. There are two issues that arise from

[11] 5 U.S.C.A. § 702 (1996).

the practice of basing modernization monies on 1996 allocations. First, if a tribe did not have an allocation in 1996 for operation and modernization, then the tribe has no base for future modernization monies. Second, if a tribe has built additional units since 1996, then the 1996 base money is insufficient to meet the current modernization needs of the tribe. This new language attempts to give relief to small tribes who are dependent on the 1996 allocation of operation and modernization monies.

Sec. 9. Hearing Requirement. NAHASDA requires that before the Secretary can take remedial action under section 401, reasonable notice and a hearing on the issue of noncompliance is required. The new modification provides that the Secretary may take immediate remedial action if the Secretary determines that the recipient has failed to comply substantially with any material provision of the Act resulting in continued federal expenditures that are not authorized by law. When the Secretary takes this action, he must simultaneously provide notice and conduct a hearing within 60 days of this notification.

Sec. 10. Performance Agreement. With regard to non-compliance due to technical incapacity, the amendment requires the recipient to enter into a "performance agreement" with the Secretary before the Secretary can provide technical assistance. This performance agreement must be achieved within one year. Upon completion of the one year term, the Secretary must review the recipient's performance. If the Secretary determines that the recipient has made a good faith effort to meet the compliance objectives, then the Secretary may enter into an additional performance agreement for another one year period. However, if the Secretary determines that the recipient has failed to make a good faith effort to meet applicable compliance objectives, then the Secretary shall take noncompliance remedial action under section 401(a).

Sec. 11. Technical and Conforming Amendments. The Table of Contents is properly amended. In addition, subsection (b) repeals the certification of compliance with subsidy layering requirements of section 206 of the Act. NAHASDA recipients will still be bound by the organic HUD statute and its subsidy layering requirement under section 102(d) of the Department of Housing and Urban Development Reform Act of 1989.[12] In 1999, the HUD Appropriations Act attempted to remedy the inconsistencies between the organic HUD statute and NAHASDA's subsidy layering requirement. To better remedy the situation, the new modification completely repeals section 206 of NAHASDA. Therefore, any changes to the organic HUD statute will control the NAHASDA program and there will be no conflict between HUD's organic statute and NAHASDA's provision.

Section 502(a) is amended to deal with Indian housing units formerly assisted under the Section 8 program. Although Section 8 vouchers are not widely used by Indian tribes and Alaska Native Corporations, some are significantly impacted by this voucher program, including the Navajo Nation and the Cook Inlet Regional Corporation in Alaska. S. 400's modification requires the counting of Section 8 vouchers under the NAHASDA block grant allocation

[12] 42 U.S.C. § 3545(d).

formula to ensure that families currently participating in the Section 8 voucher program will continue to be funded and that funding will not be eliminated mid-project. It is anticipated that ultimately, Section 8 vouchers will be phased out.

## LEGISLATIVE HISTORY

The Native American Housing Assistance and Self-Determination Act Amendments of 1999 (S. 400) was introduced on February 10, 1999, by Senator Campbell, for himself, and for Senator Inouye with Senator Hatch added as a co-sponsor on June 16, 1999. An earlier and similar version of S. 400, S. 1280 was introduced on October 9, 1997 by Senator Campbell, and was referred to the Committee on Indian Affairs. S. 400 was referred to the Committee on Indian Affairs and a hearing was held on the bill on March 17, 1999. On June 16, 1999, the Committee on Indian Affairs convened a business meeting to consider S. 400 and other measures that had been referred to it, and on that date, the Committee reported a substitute amendment to S. 400.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 16, 1999, the Committee on Indian Affairs, in an open business session, adopted an amendment in the nature of a substitute to S. 400 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

## COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 400 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 14, 1999.*

Hon. BEN NIGHTHORSE CAMPBELL,
*Chairman, Committee on Indian Affairs,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 400, the Native American Housing Assistance and Self-Determination Act Amendments of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Carla Pedone.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

*S. 400—Native American Housing Assistance and Self-Determination Act Amendments of 1999*

Summary: S. 400 would amend certain provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Most provisions concern participation and oversight requirements and enforcement of program rules. Many of those

provisions have already been implemented under current regulations. The bill would also revise the allocation formula for the block grants authorized under NAHASDA.

Although enactment of S. 400 could have some impact on the federal cost of administering the programs authorized by NAHASDA, that impact is likely to be small. Therefore, CBO estimates that enactment of S. 400 would have no significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

All provisions of this bill are either excluded from consideration under the Unfunded Mandates Reform Act (UMRA) or contain no intergovernmental or private-sector mandates as defined in that act.

Basis of Estimate: Several provisions in the bill are likely to affect the federal cost of administering the block grants authorized by NAHASDA, but the net impact is expected to be small. One provision that might decrease administrative costs incurred by the Department of Housing and Urban Development (HUD) is a change in HUD's review and audit requirements. Under current regulations, recipients who spend more than $300,000 per year must comply with the Single Audit Act of 1984, which requires annual audits by independent auditors. In addition, under current law, HUD must review all recipients at lest once a year to determine whether they are in compliance with program requirements. S. 400 would enact into law the regulation requiring audits under the Single Audit Act. In addition, S. 400 would provide HUD with the discretion to conduct reviews only if the agency deemed them appropriate. CBO expects that, as a result, HUD would probably not review all recipients every year, which would reduce the amount of staff time devoted to such activities.

Another potential savings would stem from a provision governing technical assistance. Under current law, tribes that are not in compliance with NAHASDA's provisions and that lack technical capacity may receive technical assistance from HUD for an indefinite period. S. 400 would typically limit such assistance to only one year.

Some additional costs might result from the bill's requirement that HUD conduct a hearing after it starts remedial actions in cases where grant recipients are found to expend federal funds in unauthorized ways. Under current regulations, such hearings are only held at the request of the affected recipients. The process leading up to such mandated hearings as well as their aftermath would consume extra staff time.

Intergovernmental and Private-Sector Impact: Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that require compliance with accounting and auditing procedures with respect to grants or other money or property provided by the federal government. CBO has determined that the amendments to section 405 of NAHASDA fall within that exclusion.

The other provisions of S. 400 contain no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state or local governments. In some cases, the budgets of individual tribes may either be increased or decreased by the

bill, depending upon changes in the allocation of housing funds, but total funding would not change.

Estimate Prepared by: Federal Costs: Carla Pedone. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Keith Mattrick.

Estimate Approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enactment of S. 400 will create only de minimis regulatory or paperwork burdens.

## EXECUTIVE COMMUNICATIONS

The Committee has received no official communication from the Administration on the provisions of the bill.

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 400 will result in the following changes in 25 U.S.C. Sec. 1901 et seq., with existing language which is to be deleted in black brackets and the new language to be added in italic:

### 25 U.S.C. 4111(b)(2)

(b)(2) WAIVER.—The Secretary may waive the applicability of the requirements under paragraph (1), in whole or in part, [if the Secretary finds that an Indian tribe has not complied or cannot comply with such requirements due to circumstances beyond the control of the tribe.] *if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian tribe.*

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### 25 U.S.C. 4111(c)

(c) LOCAL COOPERATION AGREEMENT.—The Secretary may not make any grant under this Act on behalf of an Indian tribe unless the governing body of the locality within which any affordable housing assisted with the grant amounts will be situated has entered into an agreement with the recipient for the tribe providing for local cooperation required by the Secretary pursuant to this Act. *The Secretary may waive the requirements of this subsection and subsection (d) if the recipient has made a good faith effort to fulfill the requirements of this subsection and subsection (d) and agrees to make payments in lieu of taxes to the appropriate taxing authority in an amount consistent with the requirements of subsection (d)(2)*

*until such time as the matter of making such payments has been resolved in accordance with subsection (d).*

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25 U.S.C. 4112(c)

(c)(6) *CERTAIN FAMILIES.—With respect to assistance provided by a recipient to Indian families that are not low-income families under section 201(b)(2), evidence that there is a need for housing for each family during that period that cannot reasonably be met without such assistance.*

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25 U.S.C. 4112

[(f) PLANS FOR SMALL TRIBES.—

(1) SEPARATE REQUIREMENTS.—The Secretary may—

(A) establish requirements for submission of plans under this section and the information to be included in such plans applicable to small Indian tribes and small tribally designated housing entities; and

(B) SMALL TRIBES.—The Secretary may define small Indian tribes and small tribally designated housing entities based on the number of dwelling units assisted under this title by the tribe or housing entity or owned or operated pursuant to a contract under the United States Housing Act of 1937 between the Secretary and the Indian housing authority for the tribe.]

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25 U.S.C. 4114(b)(1)

(b)(1) IN GENERAL.—Any contract or agreement for assistance, sale, or lease *relating to 12 or more units of housing assisted under this Act* pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the [Davis-Bacon Act [40 U.S.C. §§ 276a to 276a–5]] *Act of March 3, 1931 (commonly known as the "Davis-Bacon Act") (46 Stat. 1494, chapter 411; 40 U.S.C. 276a et seq.)* shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

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25 U.S.C. 4115

*(d) ENVIRONMENTAL COMPLIANCE.—The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of the recipient to comply with provisions of this section—*

*(1) will not frustrate the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) or any other provision of law that furthers the goals of that Act;*

*(2) does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;*

*(3) is a result of inadvertent error, including an incorrect or incomplete certification provided for under subsection (c)(1); and*

*(4) may be corrected through the sole action of the recipient.*

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25 U.S.C. 4139

**[4139. Repayment**

If a recipient uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing the housing does not comply with the requirement under section 205(2) of this title, the Secretary shall reduce future grant payments on behalf of the grant beneficiary by an amount equal to the grant amounts used for such housing (under the authority under section 401(1)(a) of this title) or require repayment to the Secretary of an amount equal to such grant amounts.**]**

*(a) REPAYMENT.—If a recipient uses grant amounts to provide affordable housing under this title, and at any time during the useful life of the housing the recipient does not comply with the requirement under section 205(a)(2), the Secretary shall take appropriate action under section 401(a).*

*(b) AUDITS AND REVIEWS.—Section 405 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4165) is amended to read as follows:*

**[405. REVIEW AND AUDIT BY SECRETARY.**

(a) ANNUAL REVIEW.—The Secretary shall, not less than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(1) whether the recipient has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objectives of this chapter and with other applicable laws, and has a continuing capacity to carry out those activities in a timely manner;

(2) whether the recipient has complied with the Indian housing plan of the grant beneficiary; and

(3) whether the performance reports under section 4164 of this title of the recipient are accurate.

Reviews under this section shall include, insofar as practicable, on-site visits by employees of the Department of Housing and Urban Development.

(b) REPORT BY SECRETARY.—The Secretary shall give a recipient not less than 30 days to review and comment on a report under this Subsection. After taking into consideration the comments of the recipient, the Secretary may revise the report and shall make the comments of the recipient and the report, with any revisions, readily available to the public not later than 30 days after receipt of the comments of the recipient.

(c) EFFECT OF REVIEWS.—The Secretary may make appropriate adjustments in the amount of the annual grants under this chapter in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.]

*(a) REQUIREMENTS UNDER CHAPTER 75 OF TITLE 31, UNITED STATES CODE.—An entity designated by an Indian tribe as a housing entity shall be treated, for purposes of chapter 75 of title 31, United States Code, as a non-Federal entity that is subject to the audit requirements that apply to non-Federal entities under that chapter.*

*(b) ADDITIONAL REVIEWS AND AUDITS.—*

*(1) IN GENERAL.—In addition to any audit or review under subsection (a), to the extent the Secretary determines such action to be appropriate, the Secretary may conduct an audit or review of a recipient in order to—*

*(A) determine whether the recipient—*

*(i) has carried out—*

*(I) eligible activities in a timely manner; and*

*(II) eligible activities and certification in accordance with this Act and other applicable law;*

*(ii) has a continuing capacity to carry out eligible activities in a timely manner; and*

*(iii) is in compliance with the Indian housing plan of the recipient; and*

*(B) verify the accuracy of information contained in any performance report submitted by the recipient under section 404.*

*(2) ONSITE VISITS.—To the extent practicable, the reviews and audits conducted under this subsection shall include onsite visits by the appropriate official of the Department of Housing and Urban Development.*

*(c) REVIEW OF REPORTS.—*

*(1) IN GENERAL.—The Secretary shall provide each recipient that is the subject of a report made by the Secretary under this section notice that the recipient may review and comment on the report during a period of not less than 30 days after the date on which notice is issued under this paragraph.*

*(2) PUBLIC AVAILABILITY.—After taking into consideration any comments of the recipient under paragraph (1), the Secretary—*

*(A) may revise the report; and*

*(B) not later than 30 days after the date on which those comments are received, shall make the comments and the report (with any revisions made under subparagraph (A)) readily available to the public.*

*(d) EFFECT OF REVIEWS.—Subject to section 401(a), after reviewing the reports and audits relating to a recipient that are submitted to the Secretary under this section, the Secretary may adjust the amount of a grant made to the recipient under this Act in accordance with the findings of the Secretary with respect to those reports and audits.*

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25 U.S.C. 4152(d)(1)

(1) FULL FUNDING.—[The formula]

*(A) IN GENERAL.—Except with respect to an Indian tribe described in subparagraph (B) the formula* shall provide that, in any fiscal year, the total amount made available for assistance under this chapter is equal to of greater than the total amount made available for fiscal year 1996 for assistance for the operation and modernization of public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937 [42 U.S.C.A. § 1437 et seq.], the amount provided for such fiscal year for each Indian tribe for which such operating or modernization assistance was provided for fiscal year 1996 shall not be less than the total amount of such operating and modernization assistance provided for fiscal year 1996 for such tribe.

*(B) CERTAIN INDIAN TRIBES.—With respect to fiscal year 2000 and each fiscal year thereafter, with respect to any Indian tribe having an Indian housing authority that owns or operates fewer than 250 public housing units, the formula under subparagraph (A) shall provide that if the amount provided for a fiscal year in which the total amount made available for assistance under this Act is equal to or greater than the amount made available for fiscal year 1996 for assistance for the operation and modernization of the public housing referred to in subparagraph (A), then the amount provided to that Indian tribe as modernization assistance shall be equal to the average annual amount of funds provided to the Indian tribe (other than funds provided as emergency assistance) under the assistance program under section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437l) for the period beginning with fiscal year 1992 and ending with fiscal year 1997.*

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25 U.S.C. 4161(a)

(a) ACTIONS BY SECRETARY AFFECTING GRANT AMOUNTS.—[EXCEPT AS PROVIDED] *IN GENERAL.—Except as provided* in subsection (b) of this section, if the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this

chapter has failed to comply substantially with any provision of this chapter, the Secretary shall—

(1) terminate payments under this chapter to the recipient;

(2) reduce payments under this chapter to the recipient by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(3) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply; or

(4) in the case of noncompliance described in section 402(b) of this title, provide a replacement tribally designated housing entity for the recipient, under section 402 of this title.

[If the Secretary takes an action under paragraph (1), (2), or (3),] *(2) CONTINUANCE OF ACTIONS.—If the Secretary takes action under subparagraph (A), (B), (C) of paragraph (1)* the Secretary shall continue such action until the Secretary determines that the failure to comply has ceased.

*(3) EXCEPTION FOR CERTAIN ACTIONS.—*

*(A) IN GENERAL.—Notwithstanding any other provision of this subsection, if the Secretary makes a determination that the failure of a recipient of assistance under this Act to comply substantially with any material provision (as that term is defined by the Secretary) of this Act is resulting, and would continue to result, in a continuing expenditure of Federal funds in a manner that is not authorized by law, the Secretary may take an action described in paragraph (1)(C) before conducting a hearing.*

*(B) PROCEDURAL REQUIREMENT.—If the Secretary takes an action described in subparagraph (A), the Secretary shall—*

*(i) provide notice to the recipient at the time that the Secretary takes that action; and*

*(ii) conduct a hearing not later than 60 days after the date on which the Secretary provides notice under clause (i).*

*(C) DETERMINATION.—Upon completion of a hearing under this paragraph, the Secretary shall make a determination regarding whether to continue taking the action that is the subject of the hearing, or take another action under this subsection.*

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25 U.S.C. 4161(b)

(b) NONCOMPLIANCE BECAUSE OF TECHNICAL INCAPACITY.—[If the Secretary] *IN GENERAL.—If the Secretary* makes a finding under subsection (a) of this section, but determines that the failure to comply substantially with the provisions of this chapter—

[(1) is not] *(A) is not* a pattern or practice of activities constituting willful noncompliance, and

[(2) is a result] *(B) is a result* of the limited capability or capacity of the recipient,

the Secretary may provide technical assistance for the recipient (directly or indirectory) that is designed to increase the capability and capacity of the recipient to administer assistance provided under this chapter in compliance with the requirements under this chap-

ter *if the recipient enters into a performance agreement with the Secretary that specifies the compliance objectives that the recipient will be required to achieve by the termination date of the performance agreement; and*

*(2) PERFORMANCE AGREEMENT.—The period of a performance agreement described in paragraph (1) shall be for a year.*

*(3) REVIEW.—Upon the termination of performance agreement entered into under paragraph (1), the Secretary shall review the performance of the recipient that is a party to the agreement.*

*(4) EFFECT OF REVIEW.—If, on the basis of a review under paragraph (3), the Secretary determines that the recipient—*

*(A) has made a good faith effort to meet the compliance objectives specified in the agreement, the Secretary may enter into an additional performance agreement for the period specified in paragraph (2); and*

*(B) has failed to make a good faith effort to meet applicable compliance objectives, the Secretary shall determine the recipient to have failed to comply substantially with this Act, and the recipient shall be subject to an action under subsection (a).*

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25 U.S.C. 4136

**[SEC. 206 CERTIFICATION OF COMPLIANCE WITH SUBSIDY LAYERING REQUIREMENTS.**

[With respect to housing assisted with grant amounts provided under this chapter, the requirements of section 3545(d) of Title 42 shall be considered to be satisfied upon certification by a recipient to the Secretary that the combination of Federal assistance provided to the housing project involved is not any more than is necessary to provide affordable housing.]

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25 U.S.C. 4181(a)

(a) TERMINATION OF ASSISTANCE.—After September 30, 1997, financial assistance may not be provided under the United States Housing Act of 1937 [42 U.S.C.A. § 1437 et seq.] or pursuant to any commitment entered into under such Act, for Indian housing development or operated pursuant to a contract between the Secretary and an Indian housing authority, unless such assistance is provided from amounts made available for fiscal year 1997 and pursuant to a commitment entered into before September 30, 1997. *Any housing that is the subject of a contract for tenant-based assistance between the Secretary and an Indian housing authority that is terminated under this section shall, for the following fiscal year and each fiscal year thereafter, be considered to be a dwelling unit under section 302(b)(1).*

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